

KEITH EDWARD WALKER,)
)
Plaintiff,)
)
vs.) Case No. 16-0013-CV-W-GAF-P
)
TIFFANY LEUTY,)
)
Defendant.)

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Defendant has moved to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), arguing that Plaintiff has failed to state a claim upon which relief may be granted. The Court may grant Defendant's motion if "it is clear that no relief can be granted under any set of facts that could be proved consistent with [Plaintiff's] allegations." *Frey v. City of Herculaneum*, 44 F.3d 667, 671 (8th Cir. 1995) (quotation marks omitted).

"In order to recover on a [federal civil rights] claim, a plaintiff must prove . . . [that] the conduct complained of was committed by a person acting under color of state law" *Comiskey v. JFTJ Corp.*, 989 F.2d 1007, 1010 (8th Cir. 1993) (citation and quotation marks omitted).

In *Polk County v. Dodson*, 454 U.S. 312, 325 (1981), the United States Supreme Court made clear that "a public defender does not act under color of state law when performing a lawyer's traditional functions as counsel to a defendant in a criminal proceeding." (footnote omitted). Plaintiff's essential claim is that Defendant provided him with legal representation in a criminal case that violated the United States Constitution. Therefore, following *Dodson*, the Court must dismiss this case for Plaintiff's failure to state a claim upon which relief may be granted because it is clear that Defendant did not act under color of state law.

Accordingly:

(1) Defendant's motion to dismiss (Docs. 7 and 8) is granted pursuant to Federal Rule of Civil Procedure 12(b)(6) for Plaintiff's failure to state a claim upon which relief may be granted;

(2) the dismissal of Plaintiff's claims is without prejudice to any habeas corpus action that Plaintiff may file in state or federal court;

(3) Plaintiff's motions for appointed counsel, to strike, for sanctions, and for other relief (Docs. 10, 11, 14, 15, 19, and 26) are denied; and

(4) Plaintiff is cautioned that federal law "makes prisoners responsible for [appellate filing fees of \$505.00] the moment the prisoner . . . files an appeal." *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997) (citation and quotation marks omitted).

So **ORDERED**.

/s/ Gary A. Fenner
GARY A. FENNER
UNITED STATES DISTRICT JUDGE

Kansas City, Missouri,

Dated: April 20, 2016.